UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Criminal No. 09-150 (RBW/JMF)

WALTER KENDALL MYERS,

v.

a/k/a Agent 202

and

GWENDOLYN STEINGRABER MYERS, :

a/k/a Agent 123 and Agent E-634

Defendants

GOVERNMENT'S APPLICATION FOR POST-INDICTMENT RESTRAINING ORDER

COMES NOW the United States, by and through the United States Attorney for this District and by the United States Department of Justice, and makes application to this Court, pursuant to 18 U.S.C. § 982(b)(1) and 21 U.S.C.§ 853(e)(1)(A), for a Restraining Order to preserve the availability of certain property that is subject to forfeiture in the above-styled criminal action (during the pendency of that action). As grounds wherefore, the government states as follows:

1. That pursuant to 21 U.S.C. § 982(b)(1) and 21 U.S.C. § 853(e)(1), this Court is authorized to enter a restraining order or injunction, require the execution of satisfactory performance bond, or take any other action to preserve the availability of property subject to forfeiture.

2. That on June 5, 2009, Walter Kendall Myers and Gwendolyn Steingraber Myers were indicted by a federal grand jury for this district on criminal charges including a wire fraud scheme, in violation of 18 U.S.C. § 1343. As part of said Indictment, the United States is seeking the criminal forfeiture under 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c), of certain property; to wit:

> any and all funds in a roll-over IRA account, held in the name of Walter Kendall Myers, account #CFE-194077, Cambridge Investment Research, maintained at Fidelity Investments up to \$174,867.

- 3. That said Indictment alleges that the property with respect to which the order is sought would, in the event of the conviction of the defendants be subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c).
- 4. That the federal grand jury's indictment of Walter Kendall Myers and Gwendolyn Steingraber Myers, which specifically identified this property as being subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c), establishes the required probable cause for the issuance of this restraining order.
- 5. That destruction or the transfer, movement, conveyance, or encumbrance of the subject property by the defendant or any third party could render said property unavailable for forfeiture.
- 6. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture and service of notice to all interested parties in accordance with the provisions of federal forfeiture law.

LEGAL MEMORANDUM

Pursuant to 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c), a person convicted of a violation of 18 U.S.C. §1343, in addition to any other penalty, shall forfeit to the United States "any and all property, real or personal, which constitutes or is derived from proceeds traceable to a "specified unlawful activity." Pursuant to 18 U.S.C. §§ 1956(c)(7) and 1960, wire fraud, in violation of 18 U.S.C. §1343, is a "specified unlawful activity."

In order to assure the availability of property for forfeiture upon conviction, 21 U.S.C. § 853(e)(1) (incorporated by 18 U.S.C. § 982(b)(1)) provides that the court may enter a restraining order upon the filing of an indictment. Title 21, United States Code, Section 853(e), in pertinent part, provides:

- (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property ... for forfeiture under this section—
 - (A) upon the filing of an indictment or information charging a violation ... for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; ...

Pre-trial restraint of assets under section 853(e) has been approved by the United States Supreme Court. In <u>United States v. Monsanto</u>, 491 U.S. 600 (1989), the district court restrained, under 21 U.S.C. § 853, a defendant from disposing of his house, his apartment and \$35,000 in cash prior to trial. The Supreme Court upheld the pre-trial restraint, noting:

[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that . . . , the

Government may restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense.

Id., at 615-16.

In the same year as the <u>Monsanto</u> decision, the Eleventh Circuit recognized the right of the United States to seek pre-trial restraint of forfeitable assets:

To preserve forfeitable assets for a possible conviction, the district court may restrain the defendant from using . . . assets before trial. The restraints may be imposed by way of a restraining order, an injunction, the execution of a performance bond, or a temporary seizure of certain assets which, because of their liquidity, can be readily transferred or hidden.

United States v. Bissell, 866 F.2d 1343, 1349 (11th Cir.), cert. denied, 493 U.S. 876 (1980).

Other courts have recognized that the right of the United States to seek pre-trial restraint extends to forfeitable assets held by third parties. <u>United States v. Real Property in Waterboro</u>, 64 F.3d 752, 755-56 (1st Cir. 1995); <u>United States v. Jenkins</u>, 974 F.2d 32, 36 (5th Cir. 1992); <u>In Re Billman</u>, 915 F.2d 916, 921 (4th Cir. 1990); <u>United States v. Regan</u>, 858 F.2d 115, 120-21 (2d Cir. 1988).

In determining whether to issue a restraining order, "[t]he return of the indictment by the federal grand jury . . . represents a determination of probable cause sufficient to issue a restraining order under 21 U.S.C. § 853(e)(1)(A) " <u>United States v. Sellers</u>, 848 F.Supp. 73, 75 (E.D.La. 1994); *accord*, <u>In re Billman</u>, 915 F.2d 916, 919 (4th Cir. 1990), *cert. denied*, 500 U.S. 952 (1991) ("[T]he government may 'seize property based on a finding of probable cause to believe that the property will ultimately be proven forfeitable, '(citation omitted). The probable cause found by the grand jury satisfies the government's burden of proving the allegations of the indictment."). As noted in the legislative history of the Comprehensive Crime Control Act of

1984.

For the purposes of issuing a restraining order, the probable cause established in the indictment or information is to be determinative of any issue regarding the merits of the government's case on which the forfeiture is to be based.

S.Rep. No. 225, 98th Cong., 2d Sess. 203 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 3182, 3386.

In the present case, the federal grand jury's indictment of Walter Kendall Myers and Gwendolyn Steingraber Myers, which specifically identified property as being subject to forfeiture, establishes the required probable cause for the issuance of a restraining order and the proposed restraining order applies to the same property identified by the grand jury as forfeitable in the indictment. The United States seeks to preserve the status quo of the subject property to prevent its alienation or dissipation. The purpose of pre-trial restraint of property is to preserve the availability of property that can be forfeited after trial. In re Billman, 915 F.2d at 921.

Further, this Court has jurisdiction to enter the requested Order "without regard to the location of any property which may be subject to forfeiture under this section "21 U.S.C. § 853(1), incorporated by 18 U.S.C. § 982(b)(1).

Wherefore, for the foregoing reasons, the Government requests this Court to enter an Order immediately restraining, prohibiting, and enjoining Walters Kendall Myers and Gwendolyn Steingraber Myers and their agents, servants, employees, attorneys, family members and those persons in active concert or participation with them, and those persons, financial institutions, or entities who have any interest or control over the subject property, from attempting or completing any action that would affect the availability, marketability or value of

said property, including but not limited to selling, assigning, pledging, distributing, encumbering, wasting, secreting or otherwise disposing of, or removing from the jurisdiction of this Court, all or any part of their interest, direct or indirect, in the subject property.

The Government further requests that the Federal Bureau of Investigation be directed to promptly serve a copy of this Restraining Order upon Walter Myers and Gwendolyn Myers, those persons, financial institutions, or other entities who have any interest or control over the subject property and make a return thereon reflecting the date and time of service.

The Government further requests that this Restraining Order remain in full force and effect until further Order of this Court.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

By: /s/

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GWENDOLYN STEINGRABER MYERS,

a/k/a Agent 123 and Agent E-634

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Defendants

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POST-INDICTMENT RESTRAINING ORDER

The United States has made an application to this Court, pursuant to 21 U.S.C. § 853(e)(1)(A), for a restraining order to preserve the availability of certain property that is subject to forfeiture in the above-styled criminal action. Upon consideration of the Government's application, and the Indictment of Walter Kendall Myers and Gwendolyn Steingraber Myers, it appears to the Court that there is reasonable cause to enter a restraining order to preserve the subject property based upon the following:

1. That a federal grand jury of this district has returned an Indictment against Walter Kendall Myers and Gwendolyn Steingraber Myers, on charges including wire fraud, in violation of 18 U.S.C. § 1343 Furthermore, said Indictment alleges criminal forfeiture under 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c) of certain property; to wit:

any and all funds in a roll-over IRA account, held in the name of Walter Kendall Myers, account #CFE-194077, Cambridge Investment Research, maintained at Fidelity Investments up to \$174,867.

- 2. That the federal grand jury's indictment of Walter Kendall Myers and Gwendolyn Steingraber Myers, which specifically identified property as being subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) and in conjunction with 28 U.S.C.§ 2461(c), establishes the required probable cause for the issuance of this restraining order.
- 3. That in the event Walter Kendall Myers and Gwendolyn Steingraber Myers are convicted of the charges alleged in said Indictment, the subject property would be subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C.§ 2461(c).
- 4. That the need to preserve the availability of the subject property through the entry of the order requested herein outweighs the hardship on any party against whom the order is to be entered.
- 5. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture in accordance with the provisions of federal forfeiture law.

THEREFORE, IT IS HEREBY ORDERED AND DECREED:

That, effective immediately, that Walter Kendall Myers and Gwendolyn Steingraber Myers, their agents, servants, employees, attorneys, family members and those persons in active concert or participation with them, and those persons, financial institutions, or other entities who have any interest or control over the subject property are hereby RESTRAINED, ENJOINED, AND PROHIBITED, without prior approval of this Court and upon notice to the United States and an opportunity for the United States to be heard, from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting,

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depreciating, damaging, or in any way diminishing the value of, all or any part of their interest, direct or indirect, in the following property:

> any and all funds in a roll-over IRA account, held in the name of Walter Kendall Myers, account #CFE-194077, Cambridge Investment Research, maintained at Fidelity Investments up to \$174,867.

IT IS FURTHER ORDERED that the Federal Bureau of Investigation shall promptly serve a copy of this Restraining Order upon Walter Kendall Myers and Gwendolyn Steingraber Myers, and those persons, financial institutions, or other entities who have any interest or control over the subject property and shall a make a return thereon reflecting the date and time of service.

IT IS FURTHER ORDERED that the United States or any Subject of this Order may seek modifications of this Order if it is deemed necessary by them to preserve their interest in the subject property.

THIS RESTRAINING ORDER shall remain in full force and effect until further Order of this Court.

DONE this the	day of June, 2009.	
	United States Judge	